

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAVID GAITAN §
VS. § CIVIL ACTION NO. 1:10cv517
M. MARTIN §

MEMORANDUM ORDER PARTIALLY ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner David Gaitan, an inmate at the Stile Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the petition be dismissed without prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation of United States Magistrate Judge; however, he subsequently filed a motion to dismiss the petition. As the respondent has not been ordered to show cause, petitioner is entitled to dismiss his petition pursuant to FED. R. CIV. P. 41(a). The petition should be dismissed without prejudice.

O R D E R

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED** to the extent it recommends dismissal. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

So **ORDERED** and **SIGNED** this 8 day of **March, 2011**.



Ron Clark, United States District Judge

